

Information Collection Request (ICR)
Safety Standard for Gates and Enclosures
Supporting Statement

A. Justification

1. *Information to be collected and circumstances that make the collection of information necessary*

Section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314, 122 Stat. 3016 (August 14, 2008), requires the Consumer Product Safety Commission (“Commission” or “CPSC”) to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be “substantially the same as” applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. “[G]ates and other enclosures for confining a child” were specifically mentioned as a durable infant or toddler product in section 104(f)(2). The Commission is proposing a safety standard for gates and enclosures incorporating by reference the voluntary standard for gates and enclosures issued by ASTM International, ASTM F1004-19, with no modifications.

Sections 8 and 9 of ASTM F1004-19 contain requirements for marking, labeling, and instructional literature that are disclosure requirements, thus falling within the definition of “collections of information” at 5 C.F.R. § 1320.3(c).

Section 8.1 of ASTM F1004–19 requires that the name, place of business (city, state, and mailing address, including zip code), and telephone number of the manufacturer, distributor, or seller appear on each gate/enclosure product and its retail packaging. Section 8.1 of ASTM F1004–19 also requires a code mark or other means on each product and retail package that indicates the date (month and year as a minimum) of manufacture.

Section 9.1 of ASTM F1004–19 requires easy-to-read and understandable instructions to be supplied with gates and enclosures. The instructions should include all warning statements, as well as instructions on assembly, installation, operating, folding, maintenance, and cleaning, as applicable.

This ICR will be incorporated into the ICR for Third Party Testing of Children’s Products (OMB Control No. 3041–0159) the next time it is updated.

2. *Use and sharing of collected information*

The information required in sections 8 and 9 of ASTM F1004–19 is intended to address safety issues that might arise with the product. The information required in section 8 of ASTM F1004–19 is intended to help the CPSC and the consumer identify the firm and the product,

should a safety issue arise. The instructional literature required by section 9 of ASTM F1004–19 is meant to prevent safety problems by providing assembly, installation, operating, folding, maintenance, and cleaning information to consumers.

3. *Use of information technology (IT) in information collection*

Information technology will not be used in these requirements. In the proposed rule, manufacturers are required to provide labeling, marking, and instructional literature according to ASTM F1004–19. This disclosure is provided with the purchase of the product.

4. *Efforts to identify duplication*

Information being disclosed is manufacturer and product specific. To the extent that firms do not already comply with the voluntary standard, information provided by these requirements is not available through any other agency, organization, or individual.

5. *Impact on small businesses*

The costs of marking, labeling, and instructional literature associated with the standard for gates and enclosures is expected to impact small firms. However, the statute requiring this action does not contain an exemption for small firms.

As described in section 12 below, there are 113 firms known currently to be marketing gates/enclosures in the United States. Based on U.S. Small Business Administration guidelines, 106 are small (8 small domestic importers and 98 small domestic manufacturers, 83 of which are very small home-based manufacturers).

In regard to the burden associated with sections 8 and 9 of ASTM F1004–19, it is expected that most of the 83 very small home-based manufacturers would need to create warning labels and instructional literature for their products, as they are unlikely to have already developed either. The time commitment necessary for these firms could be considerable, as discussed in section 12. For the remaining small firms, even those whose warning labels and/or instructional literature are not in compliance with the voluntary standard, this is unlikely to be the case, as changes to existing labels, markings, and instructional literature do not typically impose a large time requirement.

6. *Consequences to federal program or policy activities if collection is not conducted or is conducted less frequently*

Without the marking, labeling, and instructional literature requirements, the level of noncompliance and consumer misuse could increase significantly, resulting in an increase in the number of product-related deaths and injuries.

The lack of marking and labeling could complicate CPSC efforts to locate and recall noncomplying products and result in an increase in the number of product-related deaths and injuries.

7. *Special circumstances requiring respondents to report information more often than quarterly or to prepare responses in fewer than 30 days*

There are no special circumstances that will require respondents to produce labels or instructional material more often than quarterly or in fewer than 30 days.

8. *Consultation outside the agency*

The CPSC consulted several manufacturers to obtain their views on the information collection burden associated with the marking and label requirements. Additionally, the Federal Register notice for the proposed rule published on July 8, 2019 (84 FR 32346) discusses the information collection burden and invites public comment on the CPSC's estimates.

9. *Decision to provide payment or gift*

There is no payment or gift provided to respondents.

10. *Assurance of confidentiality*

There is no assurance of confidentiality. The information in the marking, labeling, and instructional literature is not confidential.

11. *Questions of a sensitive nature*

There are no questions of a sensitive nature.

12. *Estimate of hour burden to respondents*

Section 8.1 of ASTM F1004–19 requires that the name, place of business (city, state, and mailing address, including zip code), and telephone number of the manufacturer, distributor, or seller appear on each gate/enclosure product and its retail packaging. Section 8.1 of ASTM F1004–19 also requires a code mark or other means on each product and retail package that indicates the date (month and year as a minimum) of manufacture.

One hundred and thirteen known entities supply gates and enclosures to the U.S. market and may need to modify existing or create new labels to comply with ASTM F1004–19. CPSC estimates that the time required to make modifications is about 1 hour per model, but the time required to create a label from scratch is about 7 hours per model. Based on an evaluation of supplier product lines, small home-based manufacturers each supply an average of two gates, while other entities supply an average of eight models of gates/enclosures.

Therefore, the estimated burden associated with labels for small home-based manufacturers is 7 hours per model \times 83 entities \times 2 models per entity = 1,162 hours, the estimated burden associated with labels for other suppliers is 1 hour per model \times 30 entities \times 8 models per entity = 240 hours, and the total estimated burden associated with labels is 1,402

(1,162 + 240). CPSC estimates the hourly compensation for the time required to create and update labels is \$34.50 (U.S. Bureau of Labor Statistics, “Employer Costs for Employee Compensation,” Dec. 2018, Table 9, total compensation for all sales and office workers in goods-producing private industries: <http://www.bls.gov/ncs/>). Therefore, the estimated annual cost associated with the proposed labeling requirements is \$48,369 (\$34.50 per hour × 1,402 hours = \$48,369). No operating, maintenance, or capital costs are associated with the collection.

Section 9.1 of ASTM F1004–19 requires instructions to be supplied with gates and enclosures. Under OMB’s regulations, the time, effort, and financial resources necessary to comply with a collection of information incurred by parties in the “normal course of their activities” are excluded from a burden estimate when an agency demonstrates that the disclosure activities required are “usual and customary.” 5 CFR 1320.3(b)(2). As with the warning labels, the reporting burden of this requirement differs for home-based and non-home-based suppliers. We are not aware of any non-home-based manufacturers or importers that generally require use instructions but lack such instructions.

However, it is believed that many of the home-based gate manufacturers supplying on a very small scale may provide either no instructions or only limited instructions with their products as part of their “normal course of activities.” Based on information collected for the infant slings rulemaking, CPSC staff tentatively estimates that each home-based entity supplying homemade gates might require 50 hours to develop an instruction manual to accompany their products. While the number of home-based suppliers of gates is likely to vary substantially over time, it appears that at the present time there are approximately 83 home-based suppliers of gates operating in the U.S. market. These firms typically supply two gates on average. Therefore, the costs of designing an instruction manual for these firms could be as high as \$286,350 (50 hours per model x 83 entities x 2 models per entity = 8,300 hours x \$34.50 per hour = \$286,350). Not all firms would incur these costs every year, but new firms that enter the market would and this may be a highly fluctuating market. As already noted, the other 30 firms are estimated to have no burden hours associated with section 9.1 of ASTM F1004-19, because any burden associated with supplying instructions with gates/enclosures would be “usual and customary” and not within the definition of “burden” under the OMB’s regulations.

Based on this analysis, the proposed standard for gates and enclosures would impose a burden to industry of 9,702 hours at a cost of \$334,719 annually.

13. Estimates of Other Total Annual Cost Burden to Respondents or Record Keepers

There are no costs to respondents beyond those presented in Section A.12. There are no further operating, maintenance, or capital costs associated with the collection.

14. Estimate of annualized costs to the federal government

The estimated annual cost of the information collection requirements to the federal government is approximately \$3,986, which includes 60 staff hours to examine and evaluate the information as needed for Compliance activities. This is based on a GS-12 level salaried employee. The average wage rate for a mid-level salaried GS-12 employee in the Washington,

DC metropolitan area (effective as of April 2019) is \$94,520 (GS-12, step 5). This represents 68.4 percent of total compensation (U.S. Bureau of Labor Statistics, “Employer Costs for Employee Compensation,” Dec. 2018, Table 1, percentage of wages and salaries for all civilian management, professional, and related employees: <http://www.bls.gov/ncs/>). Adding an additional 31.6 percent for benefits brings average annual compensation for a mid-level salaried GS-12 employee to \$138,187 or \$66.44 per hour. Assuming that approximately 60 hours will be required annually, this results in an annual cost of \$3,986.

15. *Program changes or adjustments*

This is a new information request.

16. *Plans for tabulation and publication*

Not applicable.

17. *Rationale for not displaying the expiration date for OMB approval*

Not applicable.

B. *Collection of Information Employing Statistical Methods*

Not applicable.